IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.956 OF 2005
IN
WRIT PETITION NO.970 OF 2004

1. Union of India & anr. Applicants
vs.
B.Chengalva Rao Respondent

Mrs.V.S.Masurkar for the applicants.

Mr.N.M.Ganguli for the respondent.

ALONG WITH

CIVIL APPLICATION NO.1073 OF 2005
IN
WRIT PETITION NO.970 OF 2004

B.Chengalva Rao Applicant
vs.
Union of India & ors. Respondents

Mr.N.M.Ganguli for the applicant.

Mrs.N.V.Masurkar for the respondents.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 25th April 2005

P.C.

By this common order, we are disposing of the aforesaid two applications.

2. Civil Application No.956/2005 is at the instance of Union of India and its functionaries. It is prayed by

them in the civil application that time limit fixed for completing the departmental enquiry be lifted or in the alternative further time of six months be given for completing the departmental enquiry against the delinquent-B.Chengalva Rao.

3. Civil Application No.1073/2005 is by the delinquent for quashing of disciplinary proceedings initiated against him pursuant to the chargesheet dated 19th August 1991 for not completing the disciplinary proceedings within the time extended by this Court.

4. The delinquent-B.Chengalva Rao was served with the chargesheet on 19th August 1991. The departmental enquiry ensued and by order dated 4th February 1998 the penalty of reduction of pay by two stages in the time-scale for a further period of three years with cumulative effect was imposed. The delinquent challenged the penalty in Original Application No.773/1999 before the Central Administrative Tribunal. Interalia the contention before the Tribunal was that the principles of natural justice were not followed in the departmental enquiry. The Tribunal held that the principles of natural justice and fair play were not followed and, consequently, set aside the order of penalty and directed the disciplinary authority to take up the disciplinary proceedings from the stage of

supplying the relevant documents and proceeding further in the enquiry. Paragraphs 10 and 11 of the order dated 11th June 2003 passed by the Central Administrative Tribunal read thus:

> "10. However, the cardinal principles of natural justice and fair play moreover when the authority are discharging quasi-judicial functions, it is expected of them to follow the procedural rules in their true letter and spirit immaterial which has to be placed reliance to arrive at a finding of guilt should not be withheld from the charged officer without any justification. It is mandatory upon the authorities to have furnished the material relied upon even without demand of a charged officer, moreover when the additional documents taken on record are not forming part of the documents relied and attached as Annexures to the Memorandum in Rule 14 ibid, the duty is more onerous upon the Respondents as a model employer and to maintain transparency to have at least recorded refusal to supply documents and could have claimed privilege. Having not done so, the course adopted is in flagrant violation of rules and due to violation of the aforesaid, applicant has been certainly prejudiced in his defence depriving him of an effective hearing.
>
> 11. On the aforesaid count the enquiry and pursuant orders are liable to be set aside being unsustainable in law. OA is partly allowed. The applicant is entitled to all the consequential benefits. However, if so advised, the respondents to take up the disciplinary proceedings from the stage of supplying the relevant documents and proceeding further in the enquiry. No costs."

5. Aggrieved by the order of the Central Administrative Tribunal, the delinquent filed writ

petition No.970/2004 before this Court. The grievance raised in the writ petition by the delinquent was limited and that was to the extent that the Tribunal ought not to have granted liberty to the disciplinary authority to take up the disciplinary proceedings from the stage of supplying the relevant document and proceeding further. The Division Bench presided over by the then Chief Justice vide order dated February 5, 2004 dismissed the writ petition. However, the Division Bench directed the disciplinary authority to conclude the disciplinary proceedings by taking final decision on or before April 30, 2004.

6. The disciplinary proceedings against the delinquent could not be completed by 30th April 2004 and, accordingly, civil application no.1144/2004 came to be filed for extension of time to complete departmental proceedings. By order dated 5th May 2004 time to complete the enquiry was extended upto 30th June 2004.

7. The disciplinary proceedings could not be completed even by 30th June 2004. The main reason assigned for that by the disciplinary authority was that the delinquent was not cooperating in completing the disciplinary proceedings. Civil application No.1427/2004 was taken out by the disciplinary authority for extension of time. On 24th June 2004,

the Division Bench passed the following order:

> "1. C.A.no.1427/2004 seeks extension of time to complete departmental proceedings pending against the original respondent Chengalva Rao. The main reason for asking such extension is non co-operation of the delinquent. Two documents have been filed to indicate that prima facie there appears to be a case. Hence application for extension of time allowed. Time extended till 31-12-2004."

8. Thus, the time for completion of enquiry was extended upto 31st December 2004.

9. The disciplinary proceedings could not be concluded even by 31st December 2004 and Civil Application No.9/2005 was taken out for further extension of time by the disciplinary authority. On 12th January 2005 the Division Bench passed the following order:

> "1. Taking into consideration the peculiar facts and circumstances of this case, as a last chance, time to complete the enquiry is extended by three months. If the enquiry is not completed in three months, liberty to the respondent to apply for quashing of the enquiry by way of civil application.
>
> 2. The respondent/delinquent is directed to actively co-operate with the enquiry which may go on day to day basis. C.A. is accordingly disposed of."

10. Even within the extended time given by the order dated 12th January 2005, the disciplinary proceedings could not be completed and that has led to the aforesaid two applications viz. one by the disciplinary authority for extension of time and the other by the delinquent for quashing the disciplinary proceedings.

11. Having considered the entire material, we find that the delinquent feels that the Enquiry Officer is not following the principles of natural justice and that he is biased and, therefore, the delinquent is not letting the enquiry to complete. Obviously, in this background setting up the calendar for concluding the departmental enquiry against the delinquent is of no use. The Central Administrative Tribunal in its order dated 11th June 2003 has already issued the directions to the disciplinary authority to follow the principles of natural justice and proceed from the stage of supplying the relevant documents and proceed further in the enquiry. That order has already been upheld by this Court in its order dated 5th February 2004 and no further order in this regard needs to be passed by us. We are also of the considered view that the facts and circumstances that have come on record do not justify quashing the disciplinary proceedings against the delinquent due to non-conclusion of the

enquiry within the time granted by this Court.

12. We, accordingly, dispose of these two applications by the following order:

ORDER

. The disciplinary authority shall make all efforts in completing the disciplinary enquiry against the delinquent as expeditiously as possible and preferably on day to day basis if it is convenient to the delinquent.

No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)